



William J. Schwartz
+1 212 479 6290
wschwartz@cooley.com

VIA ECF

April 26, 2017

The Honorable Kiyo A. Matsumoto
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Shkreli and Greebel, No. 15-CR-00637 (KAM)

Dear Judge Matsumoto:

I write on behalf of non-party Retrophin, Inc. and in compliance with the Court's April 19, 2017 order (the "Order") concerning Mr. Shkreli's motion to compel. I also request that the Court enter a 502(d) Order concerning the thirty-two documents (the "Incremental Waived Set") listed on Exhibit D to Retrophin's opposition to Mr. Shkreli's motion (ECF No. 188-4).

Pursuant to the Order, enclosed for the Court's *in camera* review is a CD containing the privileged documents which are the subject of Mr. Shkreli's motion, exclusive of the Incremental Waived Set. The CD is encrypted; we will deliver the password under separate cover.

Also enclosed is the color-coded privilege log based on Exhibit 5 to Mr. Shkreli's motion, updated to remove the Incremental Waived Set. Retrophin has also removed eighteen more documents from the log and from the CD, having concluded after further review that the privileged content in these documents was either marginal or was pertinent to an issue on which Retrophin has waived the privilege.¹ An appendix identifies the titles and affiliations of the persons named on the log.

Finally, Retrophin requests that the Court endorse the enclosed 502(d) order concerning the Incremental Waived Set. Retrophin's offer to waive the privilege over these documents was made as an accommodation to Mr. Shkreli and was expressly conditioned on the entry of a 502(d) order. *See* Ex. D (ECF No. 188-4). A 502(d) order is necessary to protect Retrophin against the risk that its incremental accommodation of Mr. Shkreli in this proceeding might be invoked by other parties in other litigations to seek broad privilege waivers.

¹ The Bates numbers of the eighteen documents removed from the log are: BA_0000733; KAT_R_0011702; BA_0016671; BA_0009297; BA_0009004; BA_0013438; BA_0034897; BA_0017483; BA_0017484; BA_0033283; BA_0033284; BA_0008592; BA_0060469; BA_0066160; BA_0062703; BA_0069670; BA_0049187; BA_0055517.

Cooley

The Honorable Kiyo A. Matsumoto
April 26, 2017
Page Two

Retrophin withdraws its request for oral argument on Mr. Shkreli's motion to compel.

Respectfully submitted,



William J. Schwartz

Encl.

cc: Counsel for the Parties (Via ECF)